IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3463 of 1995
with
CIVIL APPLICATION NO. 173 OF 2002 IN
SPECIAL CIVIL APPLICATION NO. 3463 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Versus

HARESHKUMAR C NAKUM

Appearance:

1. Special Civil Application No. 3463 of 1995
MR KH BAXI for Petitioner No. 1
MR DS VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Baxi for the petitioner and Mr. Vasavada for the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour court, Jamnagar in Reference No. 1491 of 1991 (Old Reference No. 74 of 1989) dated 4th February, 1994 wherein the labour court has granted reinstatement of the respondent workman on the original post with continuity of service and with full back wages. Since the said award was made by the labour court in absence of the petitioner and as such, being an ex parte award, the petitioner moved one application under Rule 26-A of the Industrial Disputes Act (Gujarat) Rules, 1966 for setting aside such ex parte award before the same labour court which application was rejected by the labour court concerned on 30th January, 1995 and, thereafter, the respondent workman filed recovery application no. 121 of 1995. Learned advocate Mr. Vasavada appearing for the respondent workman has submitted that the said recovery application is pending before the labour court, concerned. Initially, this Court (Coram : K.R. Vyas,J.) has passed the following order on 3.5.1995 :

"Mr. Baxi for the petitioner states that the respondent has been reinstated in service in pursuance of the order passed by the labour court, Jamnagar.

Rule.

Notice as to interim relief as regards back wages returnable on 13th June, 1995 on the condition that the petitioner deposits the entire amount of back wages awarded by the labour court in this court on or before 13.6.1995. On such deposit being made, it will be open for the respondent to withdraw 50 per cent thereof on filing usual undertaking in this court that the said amount shall be subject to the result of this petition."

In view of this order passed by this court on 3.5.1995, the petitioner has deposited entire amount of back wages before this Court and fifty per cent thereof has been withdrawn by the respondent workman.

The labour court has, under the ex parte award, held that the petitioner has committed breach of the provisions of section 25-F of the Industrial Disputes Act, 1947. The labour court has also observed that not only that but the petitioner has also recruited some new hands in place of the respondent workman and, therefore, section 25-H of the Industrial Disputes Act, 1947 has

also been violated and on the basis of such findings, the labour court has made award of reinstatement in favour of the respondent workman with full back wages with continuity of service. For setting aside such ex parte award made by the labour court, the petitioner had moved one application under Rule 26-A of the aforesaid rules on the ground that no notice or summons has been served upon the responsible officer at proper address of the corporation and, therefore, the petitioner was not able to appear before the labour court. Before the labour court, objections were filed by the respondent workman at Exh. 6 and it was pointed out that right from the year 1989 till the disposal of the case, the matter was adjourned for about 23 times and at no point of time, the petitioner has remained present before the labour court. Ultimately, after considering the submissions made by the learned advocates for the parties, the labour court has come to the conclusion that the Deputy Executive Engineer PH Mechanical Sub Division, Gujarat Water Supply and Sewerage Board is the employer and, therefore, considering all these aspects of the matter, the labour court has recorded the finding that the explanation given by the petitioner was not satisfactory and the labour court ultimately rejected the said application.

Thus, it is clear that the present petition is filed by the petitioner against the award which has been made by the labour court in absence of the petitioner. However, it is clear that during the pendency of the petition, the respondent workman has already been reinstated in service and the second aspect required to be noted that out of the amount of back wages deposited by the petitioner before this Court, 50 % of the amount of back wages has been withdrawn by the respondent workman and at present, the respondent is in service of the petitioner board and the remaining amount of back wages deposited by the petitioner before this court is lying with the Registry of this Court.

The facts of the case, in short, are to the effect that the respondent was working as a watchman and has worked for one and half year as such on daily wage basis and, thereafter, his service was terminated and thereafter, dispute raised by the petitioner was referred for adjudication on 1.11.1988 to the concerned labour court. Service of the respondent was terminated in June, 1988. The matter remained pending before the labour court from 1989 to 1994 and the application for setting aside an ex parte award was rejected by the labour court on 30th January, 1995.Thus, for about more than seven years, the matter remained pending before the labour

court for adjudication. In view of these facts, it is clear that the workman who has actually worked for a period of one and half year alone has been given full back wages for the intervening period of about seven years and the petitioner is a public body. In view of these facts, admittedly, full back wages has been granted by the labour court in absence of the petitioner and an application for setting aside the ex parte award has also been rejected. Thus, the matter has not been contested and in absence of the petitioner, award has been made by the labour court. IN view of these facts, according to my view, now, since the petitioner has already been reinstated in service as per the labour court's award, as per the order dated 3.5.1995 passed by this court, it would not be just and proper to disturb the award of reinstatement. However, the award of back wages for the intervening period is required to be modified by directing that the respondent workman shall be reinstated in service with 50 per cent of the back wages for the intervening period. If the award is modified in these terms qua back wages without disturbing the award of reinstatement, this would met ends of justice.

Recently the apex court has considered this aspect in case of Management of M.C.D. v. Prem Chand Gupta reported in AIR 2000 SC 454. Para 16, 18 & 19 of the said decision are reproduced as under :

"16. To recapitulate, it is a well established fact on the record of this case that the respondent workman though initially appointed for one year from 5.5.1964 on a temporary post of section officer (civil) was continued in service after expiry of that year. His very appointment order of 5.5.1964 mentioned that he could be considered for confirmation after one year of satisfactory service. Even though he was never confirmed, the appellant corporation did not terminate his services but continued him in service. Not only that but on 1.10.1964 after giving a short break in service and he was reappointed against a vacant post caused by termination of service of another employee. Thus, at least from 1.10.1964, even though in temporary service, he continued to work on a vacant permanent post of section officer (civil) and continued to serve as such for further 18 months upto 29.4.1966 when he was visited with the impugned termination order. By that time, he had completed not less than 240 days of continuous

service for one calendar year immediately preceding 29.4.1966 i.e. from 1.4.1965 to 29.4.1966. Consequently, Section 25-F of the I.D. Act 1947 got squarely attracted in his case, it reads as follows :

'25-F. Conditions precedent to retrenchment of workman.- no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in prescribed manner is served on the appropriate Government (or such authority as may be specified by appropriate Government by notification in the Official Gazette.)'

It is not in dispute between the parties that these requirements were not complied with by the appellant corporation while terminating the respondent workman's service. The Labour Court rightly held accordingly. However, having so held on facts, the labour court found that section 25-F would not apply for the reason that the respondent workman's services were not terminated because of his being an excess staff. The said reasoning of the Labour Court ran parallel to the earlier decisions of this Court which had taken such a view on interpretation of Section 25-F But the said line of reasoning no longer held the field in the light of the later decisions of this Court. In the case of The State Bank of India v. Shri N.Sundara Money (1976) 1 SCC 822 : (AIR 1976 SC 1111 : 1976 Lab IC 769), a three Judge Bench of this Court interpreting section 25-F read with section 2(oo) of the ID Act, speaking through Krishna Iyer J.in para 9 of the report clearly laid down that in section 2(oo) the word "termination for any

reason whatsoever " is the key word. Whatever the reason, every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. The said decision of the three Judge Bench was approved by a Constitution Bench of this Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh (1990) 3 SCC 682. In view of this settled legal position, therefore, it must be held that termination of services of the respondent workman on 29.4.1966 which was admittedly not by way of punishment clearly amounted to retrenchment attracting Section 25-F of the I.D. Act."

18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on point no. 2. Once it is held that termination of the respondent workman on 29.4.1988 was null and void being violative of section 25-F of the I.D. Act, the logical consequence would be that he would be entitled to be reinstated in service with continuity and in normal course would be entitled to full back wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back wages to the respondent workman even though he will be entitled to be reinstated in service of the appellant Corporation with continuity and all further consequential benefits on that score, save and except the grant of full back wages, as indicated hereinbelow.

19. The reasons for non granting full back wages from the date of his termination of 29.4.1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29.4.1966 and after 33 years and more it is being set aside. To saddle the appellant corporation and its exchequer, which is meant for public benefit, with full back wages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of

cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamoring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant Corporation, being a public body, with full back wages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant corporation. It is true that the respondent workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP Stage itself while granting leave stayed reinstatement order on 17.11.1997. two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant corporation a public body with the burden of entire full back wages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back wages. But keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order.

1. The impugned order of the Division Bench of the High Court in so far as it holds that the termination order of the respondent workman dated 29.4.1966 was violative of rule 5 of the relevant rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the respondent workman with continuity of service is upheld on the alternative

ground holding termination of services of the respondent workman on 29.4.1966 to be violative of section 25-F of the I.D. Act.

3. So far as back wages are concerned, the impugned order of the High Court is modified by directing that the respondent workman will be entitled to get 50 per cent of back wages from the date of his termination i.e. from 29.4.1966 till his actual reinstatement in service of the appellant corporation with continuity of service. The respondent wormkan will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant Corporation being treated to have been in continuous service of the appellant Corporation from 29.4.1966 all through out till reinstatement. The appellant Corporation shall reinstate the respondent workman with continuity of service within eight weeks from today and will also pay 50 per cent back wages as directed hereinabove within that period. The appellant corporation will grant all other consequential benefits to the respondent workman in light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

In this case also, the petitioner is a public body. In this case, the matter had remained pending before the labour court concerned for about seven years. For such pendency, it cannot be said that either of the parties is responsible. Such delay cannot be attributed either to the petitioner or to the respondent. The respondent who has worked with the petitioner public body for about one and half year has been awarded full back wages for the intervening period. Therefore, in view of the principles laid down by the apex court in the aforesaid decision, according to my view, it would be just and proper to modify the award in question in so far as it relates to back wages alone by reducing the back wages to the extent of 50 % without disturbing the remaining part of the award in respect of reinstatement

with continuity of service.

Accordingly, this petition is allowed. The award made by the labour court in Reference NO. 1491 of 1990 (Old Reference No. 74 of 1989) dated 4th February, 1994 is hereby modified qua back wages alone. Instead of full back wages for the intervening period, now, it is ordered that the respondent workman is entitled for 50 per cent of the back wages for the intervening period. Award qua reinstatement in service with continuity of service is not disturbed by this Court.

Learned advocate Mr. Vasavada has submitted that the calculations made by the petitioner board till the date of actual reinstatement of the respondent workman are not proper and correct and the petitioner has not calculated these back wages on the basis of continuity of service granted by the labour court under the impugned award. On the basis of these submissions, he has submitted that the now the petitioner is required to be directed to calculate the amount of back wages on the basis of continuity of service granted by the labour court and has prayed for directing the petitioner to make such calculations on that basis and to make deposit of the further amount, if any, on the basis of such calculations. In view of these submissions made by Mr. Vasavada, learned advocate Mr. Baxi appearing for the petitioner board has submitted that the petitioner will make calculations of the back wages at the rate of 50 per cent of the back wages for the intervening period till the date of actual reinstatement of the respondent workman while considering the continuity of service of the respondent and the difference, if any, will accordingly be paid to the respondent workman and while making such calculations, the petitioner will also consider the amount of back wages which has been withdrawn by the respondent workman from this Court. Such exercise shall be completed by the petitioner within two months from the date of receipt of copy of this order. Mr. Baxi has also prayed for directing the Registry of this Court to refund the remaining amount of back wages which was deposited by the petitioner before this Court in terms of the order dated 3.5.1995 while admitting this petition.

Accordingly, this petition is partly allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Registry of this Court is also directed to refund the amount of remaining back wages deposited by the petitioner as per order of this Court dated 3.5.1995 by

account payee cheque without any delay.

Learned advocate Mr. Vasavada appearing for the respondent workman has submitted that the recovery applications filed by the respondent workman before the labour court will be withdrawn by the respondent in view of the orders passed by this court in this petition.

In view of the orders passed by this Court in the main petition, no orders are required to be made on the civil application no. 173 of 2002. Same is, therefore, disposed of accordingly with no order as to costs.

Dt. 6.3.2002. (H.K. Rathod,J.)

Vyas